

**Before the**  
**Federal Communications Commission**  
**Washington, D.C.**

**In the Matter of:**

**Notice of Proposed Rulemaking  
Appropriate Regulatory Treatment  
For Broadband Access to the  
Internet Over Cable Facilities**

)  
)  
)  
)  
)  
)  
)

**CS Docket No. 02-52**

To: The Commission:

The New Jersey Division of the Ratepayer Advocate (“Ratepayer Advocate”) hereby submits its comments in the above referenced matter and asserts that local franchising authorities (“LFAs”) should exercise jurisdiction over cable modem service quality, and that the Federal Communications Commission (“Commission”) should require multiple ISP access.

**The Role of State and Local Franchising Authorities in Regulating Cable Modem Service Quality Should Not Be Preempted**

The Ratepayer Advocate strongly believes that local franchising authorities should retain jurisdiction to regulate the service quality of cable modem service because LFAs are in the best position to identify the needs and concerns of customers within their franchise areas. The fact that cable modem service is now classified as an “information service,” does not obviate the need for service quality oversight by local franchising authorities.

One of the Commission's stated goals is to limit unnecessary and unduly burdensome regulatory costs. However, under the scheme proposed by the Commission, LFAs would be prohibited from addressing customer service inquiries or complaints concerning cable modem access even though LFAs have traditionally handled similar issues pertaining to cable services, and would be equally qualified to handle cable modem service quality issues. A streamlined complaint process whereby consumers can address their cable and cable modem questions or complaints to LFAs is the most efficient way of resolving customer issues. Moreover, the streamlined complaint process will enable LFAs to gauge whether cable operators in their franchise areas should be subject to increased service quality standards based on the nature and number of complaints received.

Furthermore, the ability of cable companies to bundle traditional cable services with broadband services raises serious service quality implications for consumers. To the average consumer, there is no distinction between traditional cable and cable modem service because these services are often provided by a single cable operator over the same lines. Therefore, requiring consumers to contact several regulatory authorities to address their concerns would create disincentives for consumers seeking relief from service quality problems. Instead, with LFAs retaining jurisdiction over cable modem service quality, consumers benefit from an efficient and streamlined complaint resolution process that enables the LFA to address concerns more expeditiously.

In addition, customers are more familiar with the local complaint procedures of their LFAs than with federal complaint procedures. Thus, consumers should be permitted to utilize the same procedures already in place for traditional cable service. To bifurcate

service quality review between cable modem and traditional cable services, would result in redundant service quality investigations on both the state and federal level leading to increased cost, inefficiency and consumer frustration. Clearly this is not the intent of the Commission's ruling in this case.

Moreover, the Commission has stated that by classifying cable modem service as an information service, the Commission seeks to promote "investment and innovation." NPRM at 5. However, where consumers would be frustrated in their efforts to resolve their concerns, and the LFAs have no oversight over cable modem service quality, providers who retain market dominance would have no incentives to improve service. Thus, there needs to be a balancing of interests between broadband deployment and customer service standards. Broadband deployment should not be accomplished at the expense of service quality.

#### It Is Necessary and Appropriate to Require Multiple Internet Service Provider ("ISP") Access

In order for consumers to reap the benefits of competition, there must be mechanisms created to ensure consumer choice in their ISP providers. In many areas of the country, cable service is provided by a single dominant carrier. In such areas, the dominant carrier has ultimate control of the cable modem market. Failure to require multiple ISP access would only further entrench the incumbent operator's stronghold of the cable market and limit consumer choice.

#### Conclusion

The Ratepayer Advocate urges the Commission to consider the potential harms to consumers if LFAs are prohibited from regulating the service quality of cable modem

access, and recommends the Commission take proactive steps to ensure consumers more choice in their ISP providers.

Respectfully submitted,

*/s/ Seema M. Singh*

Seema M. Singh, Esq.  
Acting Director and Ratepayer Advocate

cc: Service List